

TEXAS VCP NEWS

PUBLISHED BY THE VOLUNTARY CLEANUP PROGRAM OF THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

ISSUE HIGHLIGHTS INCLUDE: Regulatory News: Two New State Laws Will Provide Additional Incentives For Voluntary Parties **3** New Set of Proposed Rules to Appear Soon **4** Cleaning Up Brownfields in Texas **8** Publications Available from the VCP **8** Question and Answer Forum **10**

INTRODUCING THE VOLUNTARY CLEANUP PROGRAM

—Barry R. McBee, Chairman, TNRCC

When the Texas Legislature created the Voluntary Cleanup Program (VCP) in 1995, they sent an important message. They challenged everyone involved with cleaning up contaminated properties to find ways to work together to clean up properties that threaten our environmental well-being and the vitality of our neighborhoods. They challenged us to create a program that makes good economic and environmental sense.

We have responded by creating a program that does just what they asked: return contaminated sites to productive, vital use for Texas communities.

The VCP embodies several of this commission's guiding principles. It works by offering significant incentives to those who voluntarily come into the program and undertake cleanup. It focuses on a realistic view of risks, allowing a property owner to design a

risk-based plan for cleaning up contamination at a particular site.

We review and negotiate the terms of those plans. VCP staff then provide oversight as the cleanup progresses. Once remediation has occurred, we issue a Certificate of Completion absolving future owners and lenders from all liability for cleanup of contamination that occurred prior to their transaction.

Therein lies the beauty of the program—once the site is cleaned up to the risk-based standard, the property is not only usable, but it is also highly marketable.

There are no downsides to this program: remediated properties mean improved environmental and public health, revitalized urban neighborhoods, increased economic activity, and stronger tax bases. With this program, there are no losers: property owners win, developers and real estate professionals win, lending institutions win, communities win, taxpayers win, and the state wins.

The Environmental Protection Agency (EPA) liked the program so much that it agreed to provide

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Excavation of contaminated soil marks the beginning of a voluntary cleanup that clears the way for redevelopment in downtown Dallas' North End.

SUCCESSFUL CLEANUP GIVES DOWNTOWN DALLAS NEW LIFE

Eleven vacant acres of prime real estate in the shadow of downtown Dallas would seem, on the surface, to be a developer's dream come true. Indeed, the land had been home to many businesses over its history, but it recently lay vacant. Its former occupants—gas

stations, battery and metal companies, scrap salvage yards, paint and varnish manufacturers, chemical warehouses, and furniture makers—had all left their mark in the form of environmental contamination, long before the advent of waste management laws and environmental impact statements.

As a result, the 11-acre Dallas site was considered undevelopable.

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The *VCP News* is published by the Voluntary Cleanup Section, Pollution Cleanup Division, Texas Natural Resource Conservation Commission.

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FROM THE VCP MANAGER

—Charles Epperson

As the Texas Voluntary Cleanup Program (VCP) begins its third year, it has posted some impressive successes, but not everyone who can benefit from the VCP knows that the program exists. Increasing the awareness of the VCP and providing information about how it works are two of our goals in producing this newsletter, the *VCP News*. With it, we hope to keep you informed about the potential the VCP presents for reviving aging urban communities.

The *VCP News* covers topics of interest to all who may participate in the Texas Voluntary Cleanup Program. In this first issue, TNRCC Chairman Barry McBee tells you why the VCP was established and why we think it will work. We also describe for you one of our more successful projects, Jefferson at the North End, as an example of how the VCP can help all involved in the urban issues profit from the redevelopment of aging and possibly contaminated industrial sites.

Our intended audience covers the full spectrum of people and businesses involved in urban cleanup. Environmental cleanup professionals will find helpful answers to thorny questions in our "Question-and-Answer Forum." Real estate professionals and urban planners will find information about state and federal initiatives that may make their jobs easier. All readers will find helpful information in "Regulatory News," an update of recent changes in laws and other regulations regarding the VCP. In this issue, "Regulatory News" features a synopsis of two laws the 1997 Texas Legislature passed to improve this valuable program.

WHAT MAKES THE VCP WORK?

Everyone who is concerned with the problems of cleaning up environmental contamination knows that the process is costly and time consuming. Over the past 20 years, federal, state, and private entities have spent millions of dollars cleaning up contaminated sites in Texas, but thousands more sites remain contaminated. The Texas Voluntary Cleanup Program and other similar programs represent a different strategy: to give property owners an incentive to clean up contamination voluntarily rather than rely on fines and other punitive enforcement methods.

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Introducing the Voluntary Cleanup Program, continued from page 1

assurance to VCP sites regarding relief from future enforcement action or Superfund listing consideration. This innovative agreement was formalized by the signing of a memorandum of agreement (MOA) between the EPA and the TNRCC. Our agreement was the first in the nation to provide both CERCLA and RCRA assurances regarding cleanup and reuse of properties.

The success of the VCP can be measured tangibly. As of June 30, 1997, 478 sites have come into the program. These sites represent a wide range of past commercial and industrial activity—everything from dry cleaners to metal fabricators, from lead smelters to automobile dealers. Over 100 sites have received their Certificates of Completion. That represents the cleanup of over 100 sites in 21 months, compared to the 12 to 15 years on average it takes to clean up a Superfund site in this country. In addition, and we're especially proud of this, the VCP has recovered virtually 100 percent of its oversight costs.

This success has not come without tremendous effort on the part of everyone involved. The VCP is a dynamic program that is still under construction. The foundation has been set, the framework is in place, but the finish-out is still

in process. The program is constantly being scrutinized to determine what works best and to keep our efforts focused on what ought to be the goal—cleaning up contamination and having those who have caused contamination in the first place foot the bill, whenever feasible.

We, however, want to do more. We are in the process of streamlining state review and making risk management the basis for all cleanup actions in Texas. We have worked with the state Legislature to make improvements in the laws that govern and direct our program.

These efforts will bring even more common sense and good science to the process of cleaning up contaminated properties in Texas. By resolving some of the liability issues surrounding these properties we can give certainty and finality to a process that has, in the past, seemed never ending. We can make a meaningful contribution to the vitality, the quality of life, and the economic face of communities throughout Texas. ■

REGULATORY NEWS

TWO NEW STATE LAWS WILL PROVIDE ADDITIONAL INCENTIVES FOR VOLUNTARY PARTIES

Expanding VCP incentives and clarifying the process for participating in the program are the goals of two bills recently signed into law. Innocent property owners and operators affected by contamination from off-site sources, certain owners who did not operate, cause, or contribute to contamination, and owners of brownfield sites are groups that will benefit from the passage of these bills. House Bill 1239 was originally three separate bills, which were combined. A summary of the latest version of both bills follows.

HB 1239

Besides allowing for the receipt and expenditure of federal brownfields grants, the first portion of this law provides protection from liability to certain owners who purchased their property before the VCP was established. Formerly, the VCP was unable under the law to issue Certificates of Completion to innocent persons.

The new law provides a mechanism by which innocent persons may obtain a Certificate of Completion.

Site owners who complete a cleanup through the VCP may receive a release of liability if the following criteria are satisfied:

- ❖ The owner purchased the site prior to September 1, 1995, the effective date of the VCP.
- ❖ The owner did not contribute to or cause contamination at the site.
- ❖ The owner did not operate the site before purchasing it.
- ❖ Another person, who is a responsible party, successfully completes the voluntary cleanup.

Also, this portion of the law allows sites that are subject to an order or permit to be eligible to enter the VCP once the commission dismisses the permit or order. All provisions of this portion of the law are contingent upon the TNRCC's entering into a memorandum of agreement with the EPA that specifically authorizes the inclusion of persons who may receive a release from liability under this law. This has not occurred as of July 25, 1997.

The second portion of this law makes needed changes in the VCP process and clarifies issues on which confusion arose during the two years the VCP has existed.

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"Within this framework, the VCP participant is given the flexibility to develop site-specific remediation goals and performance-based remedial action plans."

These changes will assist VCP staff in the timely review of sites and will increase the public's understanding of the VCP. This portion of the law covers the following specific points:

- ❖ Applicants will have a 45-day deadline to submit revised VCP applications, if revisions are necessary. This measure ensures that agency financial records relating to the application fee are not left open indefinitely.
- ❖ The name that appears on the Certificate of Completion will be that of the entity that owned the site when the application to enter it in the VCP was filed. During the past two years, new owners who had purchased a site after signing the VCP application became concerned that the placement of their name on the certificate would link them to future liability.
- ❖ The law no longer requires the TNRCC executive director to file the Certificate of Completion in the real property records. This change removes regulatory duplication (a similar requirement, deed recordation, appears in the current Risk Reduction Rules) and gives the agency greater flexibility in fulfilling these requirements in the future. The Risk Reduction Rules are now being revised (see next

NEW SET OF PROPOSED RULES TO APPEAR SOON

Proposed revisions to the rules that govern voluntary cleanups are scheduled to be published in the *Texas Register* in late 1997. This set of revised rules, known as the Texas Risk Reduction Program (TRRP), was designed to preserve active and productive land uses while cleaning up contaminated properties. The goal of the TRRP is to protect human health and the environment while promoting the economic welfare of the citizens of Texas.

The TRRP is structured around two remedy standards the VCP participant may select from to develop a way to remediate a contaminated property. Based upon the projected future use of the contaminated property, the remedy standards establish specific procedures for site investigation, exposure assessment, remedial action, and postclosure care that must be implemented to ensure adequate protection of human health and the environment.

Within this framework, the VCP participant is given the flexibility to develop site-specific remediation goals and performance-based remedial action plans. These procedures are intended both to streamline the application and review process and to expedite the implementation of appropriate and cost-effective remedial actions.

The purpose of the TRRP is to develop a consistent and reasonable risk-based corrective action program that will work for all program areas of the TNRCC Office of Waste Management (OWM). The TRRP will especially benefit the Voluntary Cleanup Program (VCP) and those who participate in the VCP, as one set of technical standards will apply to all sites. The uncertainty over which set of rules apply to a particular site will become a thing of the past, as will awkward situations in which two different sets of rules apply to different portions of the same site.

The new program will replace the current Risk Reduction Rules and the Petroleum Storage Tank Risk-Based Corrective Action Rules. The TRRP will also apply to other waste program areas that are not subject to either of these current risk-based rules, such as municipal solid waste programs.

Many of the more detailed aspects of the new risk-based program will be described in guidance documents and will be based on performance requirements specified in the rules.

The proposed rules that will appear in the *Texas Register* are the result of 17 months of rule development. In that time, two concept documents have been presented for public comment. More than 40 interested parties submitted more than 1,000 individual comments on the initial concept document. All comments were considered in the drafting of the proposed rules. ■

article). The new rules may also drop this requirement for certain residential cleanups.

- ❖ Language in the law makes it clear that applicants to the

VCP do not become responsible parties solely by signing a VCP application. This change was recommended because certain applicants had expressed concern that

they may assume liability for a site simply by signing the application to enter the VCP.

- ❖ All parties not responsible for contamination to the site, not

just the future lenders and landowners, are released from all liability to the state for the cleanup of areas covered by the Certificate of Completion. This will give tenants relief that was not previously available.

- ❖ Persons who did not know, at the time they acquire an interest in the site, that the Certificate of Completion was acquired by fraud, misrepresentation, or knowing failure to disclose material information will not lose the release from liability provided by the certificate. The new law changes the original statutory language to protect these parties (bonafide purchasers) while still holding responsible any persons who did know that the certificate was acquired inappropriately.
- ❖ The law makes it possible for the VCP to receive federal funds from the EPA to assist in expanding the Brownfields Initiative in Texas.

The third portion of this law provides ad valorem tax relief for the development or redevelopment of properties that have been cleaned up through the VCP and are in a reinvestment zone. For the property to become eligible for a tax abatement, a municipality (not a school district) must agree to enter into a tax abatement agreement with the property owner.

Once the agreement is signed, the property tax exemption becomes effective for a period not to exceed four years, beginning with the year following the date the owner receives a VCP Certificate of Completion. The municipality may cancel or modify the tax abatement if the use of the property changes to a use that may result in an increased risk to human health or the environment.

Properties with projects that are funded by tax increment bonds are not eligible for the tax exemption provided by this portion of the law.

HB 2776

Most of this law relates to modifications to the State Superfund program, but it also includes a new subchapter of Chapter 361 of the Texas Health and Safety Code, entitled "Immunity from liability of innocent owner or operator." This subchapter relieves an innocent owner or operator from liability under the Texas Health and Safety Code or Texas Water Code if the contamination of the property came from elsewhere and the owner or operator did not cause or contribute to that contamination.

If the property is a portion of the source property, owners or operators may receive immunity

only if they pursued appropriate inquiry consistent with good commercial or customary practice, but failed to know or have reason to know of the contamination when they acquired the property.

To become eligible for immunity, an innocent owner or operator must grant reasonable access to the property for future investigation or remediation. Innocent owners and operators may also apply to the TNRCC for a certificate that confirms that the person is an innocent owner or operator. The application for this certificate must include a complete site investigation report. The report must prove that the property has become contaminated through the release or migration of contaminants from one or more sources not located on the property and that the owner or operator did not cause or contribute to the contamination.

After approval of the application, the TNRCC will issue the certificate, which may be conditioned upon the appropriate restriction of property use (for example, physical barriers, ordinances controlling land use, and so forth) as necessary to protect public health. The review of these applications and reports will be self-funded. ■

NEWS IN BRIEF

TEXAS VOLUNTARY CLEANUP PROGRAM RECEIVES CERTIFICATE OF ENVIRONMENTAL ACHIEVEMENT

On February 19, 1997, the Texas Voluntary Cleanup Program (VCP) received a Certificate of Environmental Achievement. Renew America coordinates the National Awards Council for Environmental Sustainability (NACES) to identify and recognize the achievements of successful environmental programs throughout the United States each year. NACES evaluates the programs on the basis of four criteria: program effectiveness, natural resource conservation, economic progress, and human development.

The Texas VCP will now be included in Renew America's *Environmental Success Index*, a one-of-a-kind database filled with successful and innovative environmental programs. The *Index* provides a forum for sharing information about the programs, motivating individuals, and providing models and information necessary

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This artist's rendition shows the high-value residential development planned for Jefferson at the North End – a plan that is possible now that site cleanup is complete.

Successful cleanup gives downtown Dallas new life, continued from page 1

It had become what people in the environmental cleanup business call a *brownfield* (see "Cleaning Up Brownfields in Texas" on page 8).

In 1996, West Pioneer Management, Inc., who then owned the property, changed the course of the site's history. They entered the downtown Dallas site, now known as Jefferson at the North End, in the Texas Voluntary Cleanup Program. With that step, West Pioneer Management began one of the largest remediation projects in Dallas history.

Under the Voluntary Cleanup Program, the owner of a brownfield can work with the Texas Natural Resource Conservation Commission (TNRCC) to define a cleanup strategy. When a property owner applies to the VCP, they submit an application, the required fee of \$1,000, and an environmental site assessment of the property. The project manager assigned to the application reviews

the submittals and decides to accept, reject, or return the application for additional information.

After a property is accepted into the VCP, the project manager negotiates a cleanup agreement with the applicant. The environmental site assessment information helps determine the extent of the contamination, and the applicant designs a risk-based plan for cleaning up the site. The agreement and the Response Action Work Plan acknowledge the contamination, set forth the scope of the remediation, and establish a timeline for completion of the project.

The Response Action Work Plan also designates the intended use for the redeveloped site, which determines the acceptable cleanup goal, or remediation level. These remediation levels are developed from toxicology studies that indicate which measures will protect the environment and human health. Residential land use requires that the groundwater and

surface soil be safe, even with around-the-clock exposure. Cleaning up a site for industrial use, on the other hand, assumes that people will be exposed to the groundwater and soil on a more limited basis.

Most applicants contract with an environmental consultant, who coordinates the actual cleanup of the site. During the cleanup process, samples of the contaminated media are routinely analyzed, and the data are reported to the VCP project manager. When a site is cleaned up to the appropriate standard, the VCP advises the TNRCC executive director to issue the owners a Certificate of Completion. This certificate grants future owners and lenders state protection from liability for the contamination that was the subject of the cleanup.

In the case of Jefferson at the North End, the property owners provided VCP Project Manager

Mike Frew with site assessment data that indicated high levels of lead, hydrocarbons, and polycyclic aromatic hydrocarbons associated with a dark organic matter that may have been used as fill material in the 1920s. After reviewing the data, Frew met with West Pioneer Management to discuss a cleanup strategy based on the anticipated residential redevelopment. The property owners then hired an environmental consulting firm, Entact, to perform the remediation.

Work began at Jefferson at the North End in the spring of 1996. The site was fenced to control access. The plan for cleanup was designed to control stormwater runoff, suppress dust, and monitor the air while 37,630 cubic yards of contaminated soil was excavated and hauled away for disposal. Most of the soil contained semivolatile organic compounds, and about 10 percent of the soil removed contained hydrocarbons. About 800 cubic yards of soil was contaminated with metals. This

metal-contaminated soil was stabilized with a portland cement mixture prior to disposal. By the time all of the soil was excavated, workers had hauled 1,882 dump truck loads of contaminated earth from the site.

When remediation was complete, the analysis of several hundred soil samples revealed that the excavation was successful. In fact, the lead levels at the site were reduced to below background, indicating that levels on site were actually lower than lead levels on the adjacent property. The VCP advised Keith Koop, president of West Pioneer Management, that the site no longer posed a risk to health or the environment. Nine months after the site entered the

program, the TNRCC executive director issued the VCP's Certificate of Completion.

Jefferson at the North End is once again under construction: new owners have purchased the 11 acres and are developing the property. Even though the cost of remediating the property approached \$2 million, West Pioneer Management was able to sell the property—profitably—for redevelopment once they received the VCP Certificate.

"Our entire deal was predicated upon receipt of the Certificate," Koop said. "This development will kick off the redevelopment of the historic North End of downtown Dallas."

The development of the Jefferson site will increase the property value by an estimated \$75 million and create about 250 jobs.

Thanks to the efforts of West Pioneer Management, Inc., Entact, and the VCP, land once considered to be dead space will soon have new economic life. The project saved valuable virgin fields from development and provided an example of the advantages and opportunities involved with the cleanup of contaminated property in Texas. ■

"By the time all of the soil was excavated, workers had hauled 1,882 dump truck loads of contaminated earth from the site."



With cleanup complete, workers begin to replace uncontaminated soil at the site that will become Jefferson at the North End.

PUBLICATIONS AVAILABLE FROM THE VCP

The VCP has published materials to help acquaint the voluntary cleanup applicant with basic information as well as with the more complex nuts and bolts of the program.

Guidance for Initiating and Reporting Response Actions Conducted under the TNRCC's Voluntary Cleanup Program, RG-215—

Provides the framework for initiating response actions in the VCP. Also provides report formats and checklists outlining minimum technical and informational requirements necessary to expedite approval of documents. The VCP urges applicants to use this guidance to help ensure the efficient review of applications and technical reports.

Voluntary Cleanup Program Application Package—Includes everything an applicant needs to make an application to the VCP.

You can get more information, download applications and access our database through our Web site. The address is: <http://www.tnrcc.state.tx.us/pcd>.

For those of you who do not have access to the Internet, feel free to contact us by phone at 512/239-5891 or by mail at *VCP News*, TNRCC, MC 221, PO Box 13087, Austin TX 78711-3087. ■

CLEANING UP BROWNFIELDS IN TEXAS

Brownfields are typically former industrial sites with either real or perceived contamination. Mostly found in the inner city, these sites often sit unused. One reason that brownfields are neglected is that developers consider building new businesses or homes on formerly undeveloped suburban land, sometimes called *greenfields*, to be more cost-effective than cleaning up existing contaminated properties. Another reason is that prospective buyers fear being held liable for the problems of the site's past use.

Owners of brownfields find their property values reduced by the contamination and the fear of future liability, often to the point that they find it impossible to sell the land. Some owners of brownfields may even abandon their property. As a result, the number of unremediated contaminated properties in Texas and the United States was growing at an alarming rate in recent years.

An increasing number of brownfields burdens local governments with the problems of a crumbling infrastructure, urban sprawl, increased poverty and urban crime, an eroding tax base, and increased risk to human health and the environment. The erosion of its tax base robs a local government of money needed to cope with the rising costs of education and crime prevention, let alone attract new jobs and businesses to the affected communities.

Faced with these growing problems, the Texas Legislature created the Voluntary Cleanup Program (VCP) to give developers and purchasers a real incentive to consider redeveloping brownfields. Under this program, once a contaminated site is cleaned up to a standard that is appropriate for its intended use, the TNRCC can certify that future owners and lenders will not be held liable for problems associated with the contamination that was once there. With this release from liability, the

owner of a brownfield can attract prospective buyers to a property made viable for redevelopment.

The Texas VCP operates in partnership with the EPA's National Brownfields Economic and Redevelopment Initiative, which is also known as the Brownfields Initiative. This initiative consists of pilot projects selected to find the best approaches to dealing with the problems of brownfields in the United States.

In Texas, the EPA has awarded brownfield pilot grants to the cities of Dallas, Houston, and Laredo and has provided technical assistance to other communities. The EPA has also provided funds to the TNRCC to help establish the VCP and implement the Brownfields Initiative in Texas. The EPA is particularly interested in working with the TNRCC and agencies from other states to develop the best coordinated action of the private sector and all levels of government—federal, state, and local—to clean up brownfields.

The Brownfields Report (King Publishing, Washington, D.C.) recently stated that the EPA will provide \$10 million to help cities pay for the remediation of brownfield sites. This is the first time the EPA has made money available to clean up brownfields; earlier funds could be used only for program development. These funds are



available under a program known as the Brownfields Cleanup Revolving Loan Fund Demonstration Pilots. The purpose of this program is to test models of coordinated public-private cleanup efforts.

The loans can only be used by municipalities that have previously won brownfield redevelopment grants. Two cities in Texas—Laredo and Dallas—are eligible. ■

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to initiate similar programs in other communities. The *Index* is available both in print and on the World Wide Web. You can call NACES at (202) 232-2252 or visit them online through their Web site at http://www.crest.org/renew_america.

VCP SITE RECOGNIZED FOR ENVIRONMENTAL EXCELLENCE

In April, West Pioneer Management, Inc., who successfully remediated a downtown Dallas site through the VCP, was recognized with a Governor's Award for Environmental Excellence. West Pioneer Management entered its property, Jefferson at the North End, in the VCP (see the related story on page 2) in the spring of 1996 and completed the site cleanup that fall. In accepting the

award, Keith Koop, president of West Pioneer Management, emphasized the importance of this project to the revitalization of all of Dallas' North End.

The Governor's Awards for Environmental Excellence honor the state's most outstanding waste reduction and pollution prevention projects in a variety of categories. The awards are presented annually to individuals, organizations, schools, and businesses that have created successful programs to preserve and protect the Texas environment. The award recipients are selected by the Governor's Blue Ribbon Selection Committee from hundreds of applications.

Jefferson at the North End is the first VCP site to be recognized by the Governor's Awards. The Governor's Blue Ribbon Committee does not have an awards category specifically for VCP sites, and does not plan to add such a category; however, the VCP staff will assist the committee in determining selection criteria for assessing next year's VCP applications. ■

*From the VCP Manager,
continued from page 2*

Under the Texas VCP, once contaminant levels in all media (land, water, and air) meet the

health-based standards for the property's future land use, future lenders and landowners receive a release of liability from the state of Texas. With that release, these innocent parties cannot be held liable for the cleanup of any past contamination at the site, should previously undiscovered contamination be discovered or standards change.

As an additional incentive, the EPA also offers certain immunities to future lenders and landowners. According to a memorandum of agreement signed May 1, 1996, the EPA will not plan or anticipate any federal action under CERCLA or RCRA while a site with ongoing investigation and remediation remains in compliance with the VCP agreement. The same protection applies when a site has been issued a Certificate of Completion. This agreement means that the EPA will not pursue federal enforcement unless the site is found to be a threat to human health or the environment, an imminent and substantial endangerment, or an emergency situation requiring federal action.

Because of these state and federal incentives, the Texas VCP is promoting environmental cleanup where none would have occurred otherwise. Public health and the environment are now pro-

tected. Cleanup stimulates redevelopment, and the resulting increase in property values better supports communities through increased tax revenues. With your participation, we can make the program an even greater success, benefiting all the citizens of Texas.

STAY IN TOUCH

The Texas Voluntary Cleanup Program wants to hear from you. Please send comments, questions, or suggestions regarding this newsletter or about our program to the VCP News editor, Joyce Leatherwood, by phone at (512) 239-5891 or by e-mail at pcd@tnrcc.state.tx.us. Let us know how we can serve you better. ■



QUESTION-AND-ANSWER FORUM

One of the challenges of creating a new, successful environmental cleanup program is responding to daily questions. Since this is a dynamic program that is constantly being reviewed and improved to better accomplish our mission, providing definitive answers to all questions is sometimes difficult. This column reflects a few of the issues that define our continuing evolution as a commonsense solution to environmental contamination in Texas.

Q What are the site eligibility requirements to enter the Voluntary Cleanup Program?

Virtually any site is eligible for participation in the Voluntary Cleanup Program. The only exceptions are sites or portions of sites for which at least one of the following is true:

- ❖ A commission order that addresses the contamination has been issued.
- ❖ Such an order is pending.
- ❖ A RCRA hazardous waste permit has been issued.
- ❖ The site is operating under an interim status designation.

Q Some of my environmental site assessment information is considered confidential and is protected by attorney-client privilege. How will this be handled in the VCP?

Frequently, in the context of a real estate transaction, documents related to the sale are held in confidentiality by the attorney-client privilege. Since the retention of documents at the TNRCC is governed by the Open Records Act, we are generally not able to keep any reports or work plans confidential. The general rule is that all information in the custody of state agencies and public officials is presumed to be public information. Consequently, documents submitted to the TNRCC will be available to the public unless the attorney general rules that the documents are "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision."

Q What technical requirements are used to guide investigation and remediation activities in the VCP?

The primary technical rules used to guide investigation and cleanup are the Risk Reduction Rules, Title 30 Texas Administrative Code (30 TAC) Chapter 335 Subchapter S, and the Petroleum Storage Tank Rules, 30 TAC Chapter 334. Other technical requirements are in 30 TAC Chapter 333. On some sites, the municipal landfill regulations are appropriate.

The Texas Risk Reduction Rules will be revised this year as the result of months of policy discussions, public comment, and agency review. Future issues of this newsletter will be one of the sources for information about rule changes.

Q I have recently collected groundwater samples from wells on my site that show concentrations of lead and other metals that exceed the Risk Reduction Standard 2 cleanup levels. Based on the history of the property, these contaminants were not expected on my site. Must I install a groundwater recovery system and begin remediation to address the elevated levels?

Not necessarily. Assuming that the elevated levels for inorganics do not result from either poor well development or contamination from an off-site source, you should first be sure you are collecting truly representative groundwater samples. Often, groundwater collected from a monitoring well includes entrained sediment or colloidal particles, elevating inorganic groundwater analytical results.

To obtain analytical results that are more truly representative of groundwater quality, you should collect samples at low flow rates (approximately 0.1 L/min), according to an April 1996 EPA guidance document. Frequently, samples collected in this manner have yielded results that fall below the appropriate action levels. If elevated levels of metals persist despite efforts to obtain the most representative samples, then a response action is necessary. That action could include a groundwater recovery system.

Q Soil analytical results from samples I have collected from several borings on my site indicate that the levels of metals such as lead in the soil exceed the soil cleanup levels that are protective of groundwater. I have collected samples in background locations that exceed this number. How do I determine the acceptable cleanup level for lead at this site?

The default cleanup level for metals in soil that is protective of groundwater was determined by multiplying the cleanup level for groundwater by 100. Unfortunately, for some of the metals this results in a cleanup level that is *below* background. Consequently, any time metals analyses are performed, samples should be collected in unaffected areas of the site so a background level can be determined for comparison. In this circumstance, the background level can then become the cleanup level.

If a contaminant level is confirmed to exceed background, a leach test may be used to show that contaminant levels in soil are unlikely to migrate to groundwater at an unacceptable level. Duplicate split samples should be analyzed for a total level of contaminant in soil in addition to a contaminant level in the leachate for comparison. In some instances, this approach can be used to leave elevated levels of metals in soil above background without adverse health affects.

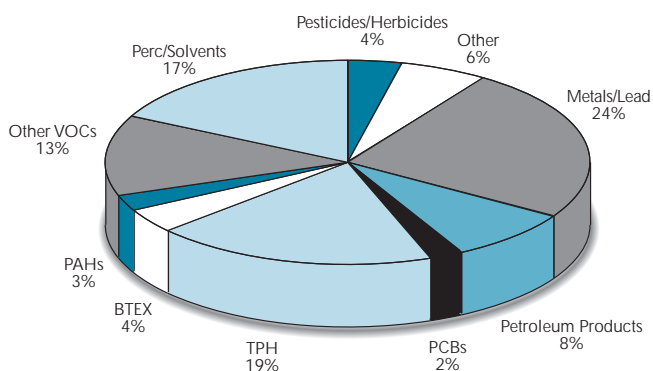
As a cautionary note, leach tests can be unpredictable—the results depend on soil types and other factors, and can vary across a site. In addition, when analyzing for metals, be sure that the detection limits for contaminants in the leachate are at or below the appropriate cleanup level for groundwater.

Q My environmental consultant has indicated that, at a minimum, Phase I and Phase II environmental assessments have to be performed on my property before a Certificate of Completion can be issued. Is this true?

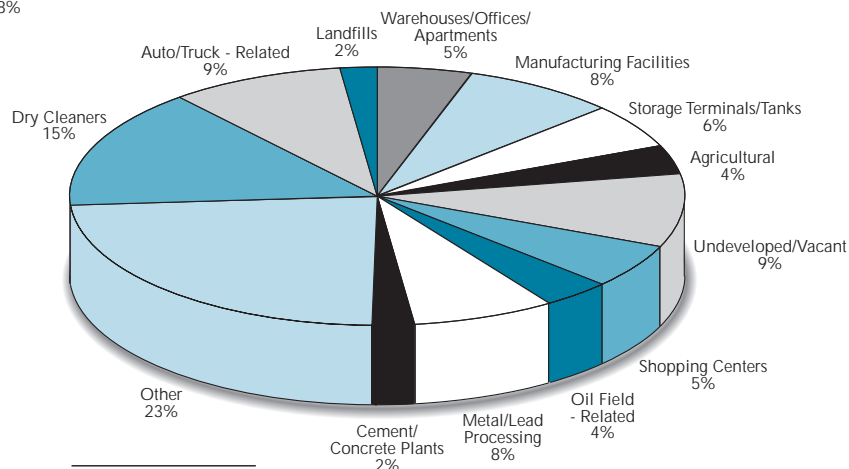
Your environmental consultant is correct. Since the VCP is issuing a Certificate of Completion, which conveys a release from state liability for all past contamination future property owners and lenders who are not also responsible for that contamination, the VCP requires that a Phase I due-diligence assessment be performed for every site seeking closure through the VCP. In addition, the VCP requires some level of environmental sampling even if the Phase I assessment does not “flag” any potential sources or evidence of contamination.

The TNRCC is committed to maintaining high standards for issuance of a Certificate of Completion and therefore requires a thorough assessment of the property before a Certificate of Completion can be issued. ■

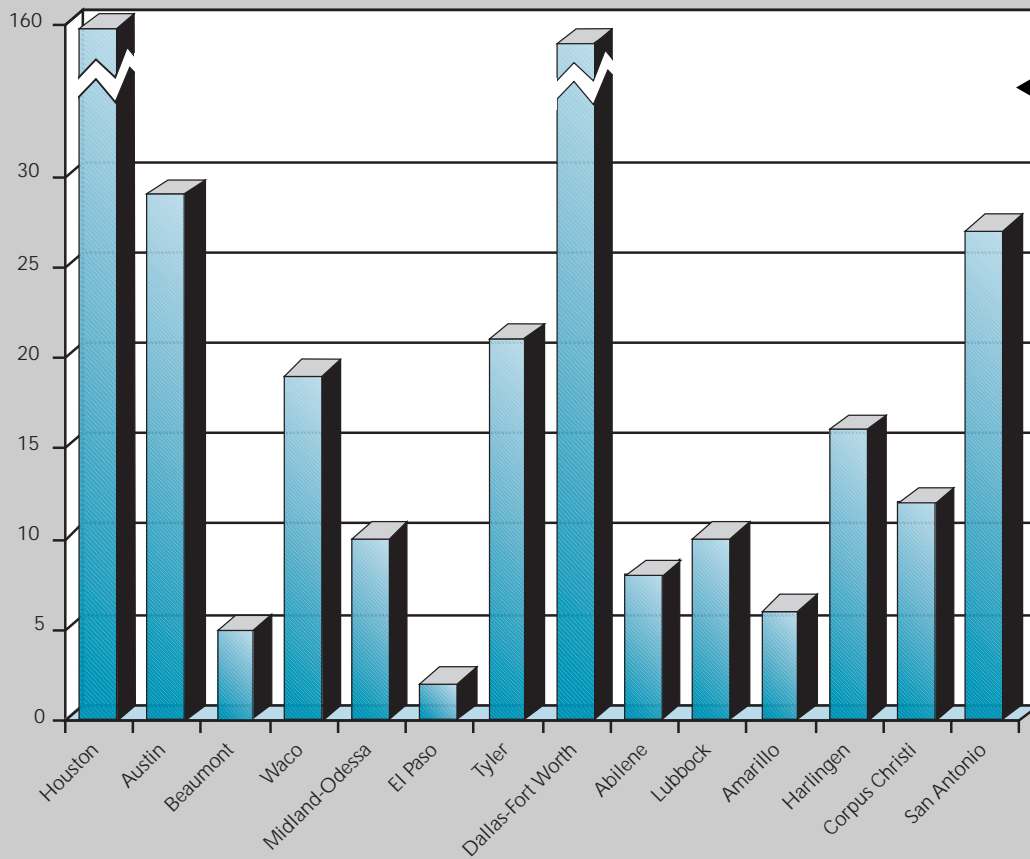
TYPES OF SITES ENROLLED IN THE VCP



By Contaminant Type.



By Facility Type.



NUMBER OF APPLICATIONS BY TNRCC REGIONS (TOTALLING 478)

PHASES OF PROJECTS FOR THE 478 SITES

Agreements signed—399
 Agreements pending—79
 Remediations—70
 Rejections—6
 Investigations—268
 Conditional certificates—11
 Final certificates—104
 Withdrawals—20



VOLUNTARY CLEANUP PROGRAM, MC 221
 TEXAS NATURAL RESOURCE
 CONSERVATION COMMISSION
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RETURN SERVICE REQUESTED